North Dakota Office of State Tax Commissioner

August 2007

Income Tax Update

News and developments for tax practitioners

A publication of the Tax Administration Division

Cory Fong
Tax Commissioner

2007 legislative rundown

This newsletter provides a summary of legislation affecting income and financial institution taxes passed by the 2007 North Dakota Legislature. If a legislative bill also contained changes affecting areas of the law not related to income or financial institution taxes, the summary only covers the tax portions of the bill.

Inside this issue:

For the text of the bill, and other pertinent information on legislative matters, go to the North Dakota Legislative Council's Web site at **www.state.nd.us/lr.**

House Bill 1018 - New business employment tax incentives included in Commerce Department legislation

This bill was introduced by the North Dakota Commerce Department. The final version that was passed included the following income tax provisions.

Angel fund investment tax credit

A new income tax credit is available to an individual, estate, trust, or corporation for investing in an angel fund. The angel fund must be incorporated in North Dakota and be in compliance with North Dakota's securities laws. For an individual, this credit is allowed on Form ND-1 and Form ND-2. The credit is equal to 45% of the total investments made in a tax year, up to a maximum credit of $45,000 per tax year. An investment must be at risk in the angel fund for at least 3 years to remain eligible for the credit. The credit is nonrefundable; however, an unused credit in the year of investment may be carried forward up to 4 tax years. A taxpayer claiming this credit may not claim an income tax credit passed through to the taxpayer by the angel fund resulting from the angel fund's own investment under the seed capital investment tax credit program or the agricultural commodity processing facility investment tax credit program. ***Also see Senate Bill 2224 for other changes relating to an angel fund.***

Statute: N.D.C.C. § 57-38-01.26
Effective date: Taxable years beginning on or after January 1, 2007.

ndTax

Office of
State Tax Commissioner
600 E Blvd Ave, Dept 127
Bismarck ND 58505-0599

nd.gov/tax
taxinfo@nd.gov
www.nd.gov

Internship employment tax credit

A new income tax credit is available to an individual, estate, trust, partnership, corporation, or limited liability company for employing an individual under an internship program set up in North Dakota. For an individual, this credit is allowed on Form ND-1 and Form ND-2. The credit is equal to 10% of the compensation paid to an intern, but no more than 5 interns employed at the same time may be taken into account for the credit. An employer is allowed no more than $3,000 of credits under the program for all tax years. To be eligible, an intern must be enrolled in an institution of higher education or vocational technical education program in a major field of study closely related to the work to be performed and must be supervised and evaluated by the employer, and the internship must qualify for academic credit. In the case of a passthrough entity, such as a partnership or S corporation, the credit is passed through to its owners in proportion to their ownership interests.

Statute: N.D.C.C. § 57-38-01.24
Effective date: Taxable years beginning on or after January 1, 2007.

A new income tax credit is available to an individual, estate, trust, partnership, corporation, or limited liability company for employing an individual under an internship program set up in North Dakota. HB 1018

Workforce recruitment tax credit

A new income tax credit is available to an individual, estate, trust, partnership, corporation, or limited liability company for employing extraordinary recruitment methods to recruit and hire employees for hard-to-fill positions in North Dakota. For an individual, this credit is allowed on Form ND-1 and Form ND-2. The credit is equal to 5% of the compensation paid during the first 12 consecutive months to an employee hired to fill a hard-to-fill employment position, and is allowed in the first tax year following the tax year in which the employee completes the 12-consecutive month employment period. The credit is nonrefundable; however, an unused credit may be carried forward up to 4 tax years.

To be eligible for the credit, the employer must pay an annual salary that is at least 125% of North Dakota's average wage (as published by Job Service North Dakota) and must have employed all of the following recruitment methods for at least 6 months to fill a position for which the credit is claimed: (1) Contracted with a professional recruiter for a fee; (2) Advertised in a professional trade journal, magazine, or other publication directed at a particular trade or profession; (3) Provided employment information on a web site for a fee; and (4) Offered to pay a signing bonus, moving expenses, or atypical fringe benefits. In the case of a passthrough entity, such as a partnership or S corporation, the credit is passed through to its owners in proportion to their ownership interests.

Statute: N.D.C.C. § 57-38-01.25
Effective date: Taxable years beginning on or after January 1, 2007.

Income exclusion for employee hired to fill a hard-to-fill employment position

A new income exclusion is available to an individual hired by an employer who qualifies for the workforce recruitment income tax credit (see preceding article). The exclusion is allowed on Form ND-1 and Form ND-2. The exclusion is equal to the taxable portion of an amount received from the employer as a signing bonus, for moving expense reimbursement, or for atypical fringe benefits. The employer must provide to the employee a written statement on which the employer attests to qualification for the workforce recruitment income tax credit and identifies the type and amount of the payment.

Statute: N.D.C.C. §§ 57-38-01.2 and 57-38-30.3
Effective date: Taxable years beginning on or after January 1, 2007.

Research expense tax credit

The income tax law governing the research expense income tax credit was significantly revised as follows:

- Eligibility for the credit was expanded to include all taxpayers—only a C corporation could claim it under prior law. ***Also see House Bill 1412 in this newsletter for other changes relating to the research expense tax credit.***

- The credit rate structure was changed. For tax years beginning on or after January 1, 2007, the credit is equal to 25% of the first $100,000 of qualified research expenses in North Dakota in excess of the base period research expenses in North Dakota during the tax year. For excess expenses over $100,000, the applicable credit rate for tax years beginning after December 31, 2006, is as follows:
  - For a taxpayer who earned or claimed the credit in any tax year beginning before January 1, 2007, the credit rate on excess expenses over $100,000 is—

    7.5%.... for the 1st tax year beginning after December 31, 2006
    11.0%.... for the 2nd tax year beginning after December 31, 2006
    14.5%.... for the 3rd tax year beginning after December 31, 2006
    18.0%.... for the 4th through 10th tax years beginning after December 31, 2006
    8.0%.... for the 11th and subsequent tax years beginning after December 31, 2006

  - For a taxpayer who did not earn or claim the credit in any tax year beginning before January 1, 2007, and who begins qualified research in North Dakota in the first 4 tax years beginning after December 31, 2006, the credit rate on excess expenses over $100,000 is—

    20.0%.... for the first 10 tax years beginning after December 31, 2006
    8.0%.... for the 11th and subsequent tax years beginning after December 31, 2006

  - For a taxpayer who did not earn or claim the credit in any tax year beginning before January 1, 2007, and who begins qualified research in North Dakota in the 5th or a subsequent tax year beginning after December 31, 2006, the credit rate on excess expenses over $100,000 is 8%.
- For a taxpayer who earned or claimed the credit in any tax year beginning before January 1, 2007, the maximum amount of credit calculated on qualified research expenses incurred in a tax year beginning after December 31, 2006, is $2 million. The amount of the credit that exceeds $2 million may not be claimed in any tax year.
- A new provision was added allowing the research expense credit to be used to offset the aggregate tax liability of a group of corporations included in a North Dakota consolidated income tax return that is filed using the combined reporting method. This does not apply to a research expense tax credit obtained through purchase, transfer, or assignment—see the next item.
- A new provision was added allowing a taxpayer to sell, transfer, or assign up to $100,000 of its unused tax research expense credit to another taxpayer, subject to the following:
  - To qualify, the taxpayer must be certified by the Commerce Department's Division of Economic Development and Finance as a "qualified research and development company."
  - The tax credit transferor and the tax credit transferee jointly must file the following with the Tax Commissioner within 30 days after the date the purchase agreement is executed:
    - A copy of the purchase agreement;
    - A statement containing the following: (1) Names, addresses, and taxpayer identification numbers of the parties; (2) Amount of the credit being transferred; (3) Gross proceeds received by the transferor; and (4) Taxable year(s) for which the credit may be claimed.
    - Form 500 allowing the Tax Commissioner to disclose tax information to either party for the purpose of verifying the correctness of the transferred tax credit.
  - The transferee must claim the credit beginning with the tax year in which the credit purchase agreement was fully executed. The transferee has the same rights to claim and use the credit that applied to the transferor, except that the transferee may not carry back an unused credit to any prior tax year.
  - The transferee may not sell, assign, or transfer the credit.

A new provision was added allowing the credit to be used to offset the aggregate tax liability of a group of corporations included in a North Dakota consolidated income tax return that is filed using the combined reporting method.
HB 1018

- If the amount of the credit calculated by the transferor is changed as a result of an amended return or an audit, the transferor must inform the transferee about the adjusted credit amount within 30 days of the amended return or final audit determination. The transferee must file an amended North Dakota income tax return to pay any additional tax due or to claim a refund within the time periods prescribed by law. The Tax Commissioner may audit the original or amended return of the transferee at any time, even though other time periods for assessment or refund have expired.
- Any gross receipts received by the tax credit transferor attributable to the transfer of a credit must be allocated to North Dakota, and may not be reduced by the taxpayer's income apportioned to North Dakota or by any North Dakota net operating loss.

Statute: N.D.C.C. §§ 57-38-30.3 and 57-38-30.5
Effective date: Taxable years beginning on or after January 1, 2007, and for credits earned or transferred on or after January 1, 2007.

A new income tax deduction is available to an individual for making a contribution to College SAVE, an I.R.C. § 529 higher education savings plan administered by the Bank of North Dakota.
HB 1091

Seed capital investment tax credit

The income tax law governing the seed capital investment tax credit was changed to increase the ceiling on the total tax credits allowed under the program to $3.5 million per calendar year. ***Also see Senate Bills 2083, 2084, and 2224 in this newsletter for other changes relating to the seed capital investment tax credit.***

Statute: N.D.C.C. § 57-38.5-05
Effective date: Taxable years beginning on or after January 1, 2007.

Agricultural commodity processing facility investment tax credit

The income tax law governing the agricultural commodity processing facility investment tax credit was changed to expand the definition of an "agricultural commodity processing facility" to include a livestock feeding, handling, milking, or holding operation that uses as part of its operation a byproduct produced at a biofuels production facility. A "biofuels production facility" is a North Dakota business that produces diesel fuel containing at least five percent biodiesel, produces corn-based or cellulose-based ethanol, or crushes soybeans or canola. ***Also see Senate Bills 2081 and 2083 in this newsletter for other changes affecting the agricultural commodity processing facility investment tax credit.***

Statute: N.D.C.C. § 57-38.6-01
Effective date: Taxable years beginning on or after January 1, 2007.

Beginning entrepreneur income exclusions

The income tax law governing the beginning entrepreneur income exclusions was repealed. However, rental income received under a lease contract entered into before January 1, 2007, that was eligible for the beginning entrepreneur rental income exclusion continues to be eligible for the exclusion for taxable years beginning on or after January 1, 2007, on the same terms and conditions for the duration of the lease.

Statute: N.D.C.C. §§ 57-38-71 through 57-38-74
Effective date: Taxable years beginning on or after January 1, 2007.

House Bill 1091 - New individual income tax deduction allowed for contributing to North Dakota's College SAVE plan

A new income tax deduction is available to an individual for making a contribution to College SAVE, an I.R.C. § 529 higher education savings plan administered by the Bank of North Dakota. The deduction is equal to the aggregate amount of contributions to the plan in a taxable year, up to a maximum amount of $5,000 ($10,000, if married filing jointly). The deduction is allowed on

Form ND-1 and Form ND-2. The tax commissioner may disclose a taxpayer's name, address, and identification number to the Bank of North Dakota for the purpose of administering the new deduction.

Statute: N.D.C.C. §§ 57-38-01.2, 57-38-30.3, and 57-38-59
Effective date: Taxable years beginning on or after January 1, 2007.

House Bill 1225 - Criteria governing the size and shape of North Dakota renaissance zones changed

The law governing the North Dakota Renaissance Zone Program was changed to increase the maximum size of a zone and to provide an exception to a zone's boundary and block requirements. The maximum size that a zone may be was increased from 20 blocks to 23 blocks. For a city with a population over 5,000, the maximum size a zone may be was increased from 35 to 38 blocks. In addition, a one-time exception to the continuous boundary and contiguous block requirements is allowed if the noncontiguous area is no more than 3 blocks in size and the shortest distance between the noncontinuous boundaries of the two portions of the zone is no more than one-half mile. For more information, contact Gordon LaFrance, ND Division of Community Services at (701) 328-3698; e-mail: glafrance@nd.gov.

Statute: N.D.C.C. § 40-63-03
Effective date: August 1, 2007.

House Bill 1233 - Sale, assignment, or transfer of unused energy device tax credit to another taxpayer allowed

The income tax law governing the tax credit for installing a geothermal, solar, or wind energy device in North Dakota was changed to allow the sale, assignment, or transfer of an unused tax credit to another taxpayer. To qualify, the taxpayer acquiring the credit must either (1) purchase electrical power generated by the energy device as part of the consideration in a power purchase agreement or (2) construct or expand electrical transmission lines in North Dakota after August 1, 2007. A taxpayer may sell, assign, or transfer an unused tax credit to only one other taxpayer in a tax year. Any proceeds received for the sale, assignment, or transfer of an unused tax credit must be allocated to North Dakota, and the proceeds may not be reduced by any income apportioned to North Dakota or by any North Dakota net operating loss.

The taxpayer acquiring the unused tax credit may not sell, assign, or transfer the unused tax credit. Also, the taxpayer acquiring the unused tax credit may not offset more than 60 percent of that taxpayer's North Dakota income tax for any tax year with the acquired tax credit. In the case of a taxpayer who constructs or expands transmission lines, the amount of the acquired credit that may be used in a tax year is limited to the actual cost of acquisition and installation of the transmission lines constructed in North Dakota for that same tax year.

Both taxpayers involved in the sale, assignment, or transfer transaction are subject to special reporting and disclosure requirements. The total amount of tax credits that may be sold by all taxpayers in any biennium is limited to $3 million.

Also see House Bill 1514 and Senate Bill 2298 in this newsletter for other changes relating to the energy device tax credit.

Statute: N.D.C.C. § 57-38-01.8
Effective date: Applies to energy devices installed on or after January 1, 2007.

A new income exclusion is available to a Native American who lives or works on an Indian reservation in North Dakota where he or she is not an enrolled member.
HB 1393

House Bill 1393 - Native American income exclusion expanded by state statute

A new income exclusion is available to a Native American who lives or works on an Indian reservation in North Dakota where he or she is not an enrolled member. This change in state law combined with the exemption already provided by federal law effectively provides that a Native American is not subject to North Dakota income tax and does not have to file a North Dakota income tax return if the individual (1) is an enrolled member of a federally-recognized Indian tribe, (2) lives on ***any*** Indian reservation in North Dakota and (3) derives all of his or her income from sources on ***any*** Indian reservation in North Dakota.

Statute: N.D.C.C. §§ 57-38-01.2 and 57-38-30.3
Effective date: Taxable years beginning on or after January 1, 2007.

House Bill 1403 - New tax credit allowed to eligible small businesses located in economically viable small communities in North Dakota

A new income tax credit is available to an individual, estate, trust, partnership, C corporation, S corporation, and limited liability company certified as a microbusiness by the Director of the North Dakota Commerce Department's Division of Economic Development and Finance. In the case of an individual, the credit is allowed on Form ND-1 and Form ND-2. In the case of an estate or trust, the credit is allowed on Schedules 1 and 2 of Form 38. In the case of a passthrough entity, the credit is determined at the passthrough entity level and passed through to the entity's owners in proportion to their ownership interests.

For this purpose, "compensation" does not include salary increases, cost of living adjustments, or any other increase not directly related to the hiring of new employees during the tax year.
HB 1403

A "microbusiness" means a business that employs no more than 5 employees in a community with a population of at least 100 but fewer than 2,000 people and has one or more of the following: (1) An active community economic development organization; (2) An ongoing relationship with a regional or urban economic development organization; or (3) An existing city sales tax, all or part of the revenue from which is dedicated to economic development.

To be certified as a microbusiness, the taxpayer: (1) Must be actively engaged in the operation of the business; (2) Must purchase eligible property or hire eligible employees, resulting in the creation of new income or jobs; (3) Must not directly compete with any established business located within 15 miles of the taxpayer's business; (4) Must be located at least 15 miles from a city with a population of 2,000 or more people; and (5) Must not close or reduce its operations in one area of North Dakota and relocate substantially the same business operation to another area in North Dakota. No more than 200 businesses may be certified as a microbusiness.

The credit is equal to 20% of the total of the following amounts:

- The amount by which the cost of real property and depreciable personal property located in North Dakota purchased during the tax year exceeds the cost of real property and depreciable personal property located in North Dakota purchased during the previous tax year. The cost of vehicles required to be registered for operation on the roads and highways of North Dakota may not be included.
- The amount by which the eligible rent paid to lease real property and depreciable personal property located in North Dakota exceeds the eligible rent paid to lease real property and depreciable personal property located in North Dakota during the previous tax year. "Eligible rent" means the average net annual rent multiplied by the number of years, not to exceed 10 years, that the taxpayer is obligated under the lease contract; however, do not include in the calculation any increase in the rent paid for property leased under a contract entered into prior to the current tax year.
- The amount by which compensation paid to North Dakota resident employees hired during the tax year exceeds the compensation paid to North Dakota resident employees hired during the previous tax year. For this purpose, "compensation" does not include salary increases, cost of living adjustments, or any other increase not directly related to the hiring of new employees during the tax year.

A taxpayer is allowed no more than $10,000 of tax credits for all tax years. The credit is nonrefundable; however, an unused credit may be carried forward for up to 5 tax years.

Statute: N.D.C.C. § 57-38-01.27
Effective date: Taxable years beginning on or after January 1, 2007.

House Bill 1412 - Research expense tax credit allowed to owners of a passthrough entity

The income tax law governing the research expense income tax credit was expanded to include all taxpayers—only a C corporation could claim it under prior law. This includes a passthrough entity, such as a partnership, S corporation, or limited liability company. In the case of a passthrough entity, the credit determined at the passthrough entity level is passed through to the entity's owners in proportion to their ownership interests. In addition, the individual income tax law was changed to allow a passthrough entity owner who is an individual to claim the tax credit on Form ND-1. ***Also see House Bill 1018 in this newsletter for other changes relating to the research expense tax credit.***

Statute: N.D.C.C. §§ 57-38-30.3 and 57-38-30.5
Effective date: Taxable years beginning on or after January 1, 2007.

House Bill 1514 - Biomass added as renewable energy source for energy device income tax credit

The income tax law governing the tax credit for installing a geothermal, solar, or wind energy device in North Dakota was expanded to include a device that uses biomass as its renewable energy source. A biomass energy device means a system that uses agricultural crops, wood, animal waste, landfill gas, or other biological sources, including their residues, to produce fuel or electricity. ***Also see House Bill 1233 and Senate Bill 2298 in this newsletter for other changes relating to the energy device tax credit.***

Statute: N.D.C.C. § 57-38-01.8
Effective date: Taxable years beginning on or after January 1, 2007.

A biomass energy device means a system that uses agricultural crops, wood, animal waste, landfill gas, or other biological sources, including their residues, to produce fuel or electricity.
HB 1514

Senate Bill 2032 - Property tax relief and marriage penalty relief contained in major property tax bill

This bill was introduced by the Interim Finance and Taxation Committee. The final version that passed includes a 2-year property tax relief plan in the form of two new income tax credits: (1) the residential and agricultural property income tax credit and (2) the commercial property income tax credit. The bill also includes a new marriage penalty relief income tax credit. Each of these three new income tax credits is summarized below. With respect to the property tax relief income tax credits, go to the Office of State Tax Commissioner's web site at **www.nd.gov/tax** for developments in the implementation of these new credits.

Residential and agricultural property income tax credit

A new income tax credit is available to an individual whose primary residence, whether owned or leased, is located in North Dakota. The credit is equal to 10% of the property tax levied on property located in North Dakota that is owned by the individual and is classified as residential or agricultural for property tax purposes. This includes mobile home tax levied on a mobile home located in North Dakota that is classified as residential property. Property taxes for purposes of this credit means the amount before any discount is subtracted and before any special assessments are added. Except for married individuals who file a joint return, if the property is owned by more than one individual, each eligible owner takes into account a share of the property taxes on the eligible property based on his or her ownership interest.

- On the 2007 North Dakota income tax return, the credit is calculated on—
  - The 2006 property tax due on January 1, 2007.
  - The 2007 mobile home tax due in the 2007 calendar year.
- On the 2008 North Dakota income tax return, the credit is calculated on—
  - The 2007 property tax due on January 1, 2008.
  - The 2008 mobile home tax due in the 2008 calendar year.

The maximum credit allowed on each year's income tax return is—

- $500............ if single, head of household, qualifying widow(er), or married filing separately.
- $1,000.......... if married filing jointly.

If the credit exceeds the income tax liability for the tax year, the individual may make elect to do one of the following:

- Carry forward the unused credit for up to 5 tax years; or
- Request the tax commissioner to issue to the individual a certificate for the amount of the unused credit, which the individual may redeem at the county treasurer's office.

Property taxes for purposes of this credit means the amount before any discount is subtracted and before any special assessments are added.
SB 2032

If total income tax credits for residential and agricultural property claimed on 2007 income tax returns as of November 15, 2008, exceed $47 million, the rate of the credit must be reduced for the 2008 income tax year using a statutorily-prescribed formula.

In the case of an individual whose primary residence is located in North Dakota but who is not required to file a North Dakota income tax return, the individual may apply to the Office of State Tax Commissioner (on forms yet to be prescribed) to obtain a certificate for the amount of the residential and agricultural property income tax credit. The individual redeems the certificate at the county treasurer's office.

Commercial property income tax credit

A new income tax credit is available to an individual, C corporation, partnership, S corporation, and limited liability company that owns property located in North Dakota that is classified as commercial for property tax purposes. The credit is equal to 10% of the property tax levied on the property. This includes mobile home tax levied on a mobile home located in North Dakota that is classified as commercial property. Property taxes for purposes of this credit means the amount before any discount is subtracted and before any special assessments are added. Except for married individuals who file a joint return, if the property is owned by more than one taxpayer, each eligible owner takes into account a share of the property taxes on the eligible property based on the taxpayer's ownership interest.

- On the 2007 North Dakota income tax return, the credit is calculated on—
  - The 2006 property tax due on January 1, 2007.
  - The 2007 mobile home tax due in the 2007 calendar year.
- On the 2008 North Dakota income tax return, the credit is calculated on—
  - The 2007 property tax due on January 1, 2008.
  - The 2008 mobile home tax due in the 2008 calendar year.

The maximum credit allowed on each year's income tax return is—

- $500............ if single, head of household, qualifying widow(er), or married filing separately.
- $1,000.......... if married filing jointly.
- $1,000.......... if a C corporation.

If the credit exceeds the income tax liability for the tax year, the unused credit may be carried forward for up to 5 tax years.

In the case of a passthrough entity, the entity does not calculate nor report the amount of the credit on its North Dakota return; instead, the entity's eligible owners take into account their share of the entity's total North Dakota commercial property taxes in calculating the commercial property tax credit on their North Dakota income tax returns. A passthrough entity for this purpose means a partnership, subchapter S corporation, or limited liability company treated like a passthrough entity for income tax purposes. An eligible owner means an individual or C corporation that held an interest in the entity on the applicable due date of the entity's property taxes. (In the case of an owner that is another passthrough entity, the owner's share of the property taxes is, in turn, taken into account by that entity's owners.) The eligible owner's share of the taxes is determined by the owner's percentage of ownership in the entity on the due date of the applicable property taxes. The eligible owners take their share of the taxes into account on their North Dakota income tax return is as follows:

- The entity's 2006 commercial property taxes (and 2007 mobile home tax, if applicable) are taken into account on the owner's 2007 North Dakota income tax return.
- The entity's 2007 commercial property taxes (and 2008 mobile home tax, if applicable) are taken into account on the owner's 2008 North Dakota income tax return.

If total income tax credits for commercial property claimed on 2007 income tax returns as of November 15, 2008, exceed $7 million, the maximum allowable credit must be reduced for the 2008 income tax year using a statutorily-prescribed formula.

Statute: N.D.C.C. §§ 57-38-01.29, 57-38-30, and 57-38-30.3
Effective date: Taxable years beginning on or after January 1, 2007.

A new income tax credit is available to married individuals who file a joint North Dakota income tax return.
SB 2032

Marriage income tax credit

A new income tax credit is available to married individuals who file a joint North Dakota income tax return. The credit is allowed only on Form ND-1, the main method of filing for individuals. The credit is nonrefundable, and an unused credit may not be carried over to any other tax year. The credit is equal to the amount by which the joint tax liability exceeds the sum of:

- Tax on the earned income of lesser-earning spouse using the single tax rates ***plus***
- Tax on the joint North Dakota taxable income reduced by the earned income of the lesser-earning spouse using the single tax rates.

For the 2007 tax year, the credit is limited to $300. For tax years after 2007, the maximum credit allowed will increase each year as the income brackets in the tax rate schedules are indexed for inflation.

"Earned income" means the sum of the following: (1) Earned income as defined for the federal earned income tax credit under I.R.C. § 32; (2) Taxable portion of amounts from a retirement pension, profit-sharing, stock bonus, or annuity plan; and (3) Taxable portion of social security benefits.

"Earned income of lesser-earning spouse" means the earned income of the spouse having the lower earned income reduced by the sum of:

- One personal exemption ***plus***
- One-half of the amount of the standard deduction for married persons filing jointly.

A part-year resident or full-year nonresident is allowed a credit equal to the amount allowed to a full-year resident multiplied by the North Dakota income ratio calculated on Schedule ND-1NR.

Statute: N.D.C.C. §§ 57-38-01.28 and 57-38-30.3
Effective date: Taxable years beginning on or after January 1, 2007.

Senate Bill 2078 - Family member care tax credit provisions revised

The individual income tax law governing the family member care income tax credit was changed as follows: (1) The definition of a "qualifying family member" was changed to provide that, in the case of the disability qualifier, the family member (for whom the care is provided) has to be disabled ***as defined*** for purposes of the federal Social Security Act (and not disabled as determined by the U.S. Social Security Administration); (2) The definition of "qualified care expenses" was changed to replace the language covering goods or services that are necessary to avoid placement of the family member in a long-term care facility with new language allowing medical expenses that are deductible under federal income tax law; and (3) The provision requiring multiple taxpayers who care for the same family member to prorate the maximum credit of $2,000 was removed, effectively making the maximum $2,000 credit available to each taxpayer.

Statute: N.D.C.C. § 57-38-01.20
Effective date: Taxable years beginning on or after January 1, 2007.

Senate Bill 2081 - Agricultural commodity processing facility investment tax credit program expanded and simplified

A new provision was added that defines a "qualified investment" to mean a payment of cash or the transfer of a fee simple interest in real property located in North Dakota.
SB 2081

The law governing the agricultural commodity processing facility investment tax credit program was significantly changed as summarized below. ***Also see House Bill 1018 and Senate Bill 2083 in this newsletter for other changes relating to the agricultural commodity processing facility investment tax credit.***

Business certification. The certification provisions of the program, which are administered by the North Dakota Commerce Department's Division of Economic Development and Finance, were revised and expanded to:

- Codify the certification procedure.
- Set a limit of 4 years for the certification period, which must be set out in the certification letter to the business.
- Allow a one-time application for recertification under the program, which must be filed within 90 days before the end of the first certification period.
- Increase the limit on the number of businesses that may be certified for the program to 10 businesses in each calendar year.

Income tax credit. The income tax credit provisions of the program, which are administered by the Office of State Tax Commissioner, were revised and expanded to:

- Replace the existing limitations on the amount of the tax credit that may be used in any tax year with one limitation that allows up to $50,000 of the total tax credits to be used in a tax year. *(Credits in excess of $50,000 may be carried over.)*
- Change the calculation of the allowable tax credit to 30 percent of investments made in a tax year, with no limitation on the amount of investment or credit. *(This differs from previous law where the allowable credit was 30 percent of investments made in a tax year, up to a maximum allowable tax credit of $50,000, and credits in excess of $50,000 were not allowed in any year.)*
- Increase the unused tax credit carryover period to 10 years.
- Define a "qualified investment" as a payment of cash or the transfer of a fee simple interest in real property located in North Dakota. In the case of a transfer of a fee simple interest in real property, the following conditions apply:
  - Personal property that becomes a fixture to the real property after the transfer is not a qualified investment.

- ○ The value of the contribution may not exceed the appraised value as established by a licensed or certified appraiser.
- ○ The value of the contribution must be approved by the governing body of the qualified business, subject to the standards for valuing consideration for shares under North Dakota corporation law.
- ○ The qualified business is required to provide to the tax commissioner a copy of the appraised valuation, a copy of the governing body's resolution approving the value of the contribution, and a copy of the statement of full consideration within thirty days after the instrument transferring title to the real property is recorded with the register of deeds.
- ○ The tax credit is allowed in the tax year in which the instrument transferring title to the real property is recorded with the register of deeds.

- Provide that a transfer of monies from a retirement plan directly to a qualified business will be deemed to be an investment made by the taxpayer (retirement plan participant) if a separate account is maintained for the participant by the plan and the participant controls where the account assets are invested.

Statute: N.D.C.C. §§ 57-38.6-01, 57-38.6-02, and 57-38.6-03
Effective date: The changes to the certification provisions are effective for qualified businesses that are certified or recertified on or after January 1, 2007. The changes to the income tax provisions are effective for taxable years beginning on or after January 1, 2007.

Provide that a transfer of monies from a retirement plan directly to a qualified business will be deemed to be an investment made by the taxpayer (retirement plan participant) . . . SB 2081

Senate Bill 2083 - Audit time periods extended for investment tax credit programs

The income tax law governing the time periods for audit and assessment was expanded to include a new 4-year time period applicable to tax credits claimed under the seed capital and agricultural commodity processing facility investment tax credit programs governed by N.D.C.C. chs. 57-38.5 and 57-38.6, respectively. The 4-year time runs from the later of (1) the due date without extension of the return on which a tax credit is claimed or (2) the date the return is filed. This new time period does not limit any other time period that may be available for audit and assessment purposes.

Statute: N.D.C.C. § 57-38-38
Effective date: Applies to investments made on or after January 1, 2003.

Senate Bill 2084 - Seed capital investment tax credit program expanded and simplified

The law governing the seed capital investment tax credit program was significantly changed as summarized below. ***Also see House Bill 1018 and Senate Bills 2083 and 2224 in this newsletter for other changes relating to the seed capital investment tax credit.***

Business certification. The certification provisions for the program, which are administered by the North Dakota Commerce Department's Division of Economic Development and Finance, were revised and expanded to:

- Codify the certification procedure.
- Set a limit of 4 years for the certification period.
- Allow a one-time application for recertification under the program, which must be filed within 90 days before the end of the first certification period.

Income tax credit. The income tax credit provisions of the program, which are administered by the Office of State Tax Commissioner, were revised and expanded to:

The financial institution tax and income tax laws governing the due date for filing a return were changed to provide that a return filed for a tax year that is less than 12 months—referred to as a "short period" return—must be filed by the later of April 15 or the date prescribed by the Internal Revenue Service.
SB 2091

- Replace the existing limitations on the amount of the tax credit that may be used in any tax year with one limitation that allows up to $112,500 of the total tax credits to be used in a tax year. *(Credits in excess of $112,500 may be carried over.)*
- Change the calculation of the allowable tax credit to 45 percent of investments made in a tax year, with no limitation on the amount of investment or credit. *(This differs from previous law where the allowable credit was 45 percent of investments made in a tax year, up to a maximum allowable tax credit of $250,000, and credits in excess of $250,000 were not allowed in any year.)*
- Define a "qualified investment" as a payment of cash.
- Provide that a transfer of monies from a retirement plan directly to a qualified business will be deemed to be an investment made by the taxpayer (retirement plan participant) if a separate account is maintained for the participant by the plan and the participant controls where the account assets are invested.
- Remove the language disqualifying an individual for the credit if the individual's "full-time professional activity is the operation of the business" and add new language disqualifying a taxpayer receiving more than 50 percent of the taxpayer's gross annual income from the qualified business.

Statute: N.D.C.C. §§ 57-38.5-02 and 57-38.5-03
Effective date: The changes to the certification provisions are effective for qualified businesses that are certified or recertified on or after January 1, 2007. The changes to the income tax provisions are effective for taxable years beginning on or after January 1, 2007.

Senate Bill 2091 - Technical changes made relating to short period returns and returns filed by certain passthrough entities

The financial institution tax and income tax laws governing the due date for filing a return were changed to provide that a return filed for a tax year that is less than 12 months—referred to as a "short period" return—must be filed by the later of April 15 or the date prescribed by the Internal Revenue Service.

The income tax law governing the payment of estimated tax was changed as follows:

- For a short period that is less than 120 days, estimated payments are not required.
- For a short period that is 120 or more days, if the short period ends prior to any remaining due date for payment of estimated tax, the final estimated tax payment is due on the 15th day of the last month of the short period.

The income tax law governing the composite filing and withholding requirements for passthrough entities was changed to provide that the penalty and interest provisions for income tax purposes apply to a passthrough entity for failure to file a composite return, withhold tax, or pay the withheld tax.

Statute: N.D.C.C. §§ 57-35.3-06, 57-38-31.1, 57-38-34, and 57-38-63
Effective date: Taxable years beginning on or after January 1, 2007.

Senate Bill 2224 - Angel fund treated as passthrough entity for purposes of seed capital investment tax credit program

The law governing the seed capital investment income tax credit program was changed to provide that a taxpayer eligible for the tax credit includes an angel fund. Regardless of whether the angel fund is subject to North Dakota income tax on its own income, the tax credit calculated on the angel fund's investment must be passed through to the fund's investors based on their respective interests in the fund. The investors in the angel fund claim their respective shares of the tax credit on their own North Dakota income tax returns. ***Also see House Bill 1018 for other changes relating to an angel fund.***

Statute: N.D.C.C. §§ 57-38.5-01 and 57-38.5-03
Effective date: Taxable years beginning on or after January 1, 2007.

Senate Bill 2298 - Energy device tax credit allowed to purchaser of an energy device under a turnkey arrangement

The income tax law governing the tax credit allowed for installing a geothermal, solar, or wind energy device in North Dakota was changed to provide that if ownership of a fully-operational energy device is sold upon the completion of its installation under a turnkey arrangement, the tax credit otherwise allowed to the taxpayer who installed the device transfers with the device and may be claimed by the purchaser of the device. The tax credit may not be transferred to subsequent purchasers of the same device.

Also see House Bills 1233 and 1514 for other changes relating the energy device tax credit.

Statute: N.D.C.C. § 57-38-01.8
Effective date: Applies to energy devices installed on or after January 1, 2007.

Senate Bill 2363 - New income tax credit for contributions to an endowment fund of a nonprofit organization in North Dakota

This bill made significant changes to the income tax law governing the planned gift tax credit allowed to individuals. It also created new provisions in the same law that provide for a new income tax credit that is available to an estate, trust, C corporation, and limited liability company for making a charitable contribution to an endowment fund of an eligible nonprofit organization in North Dakota. Each of these major changes is summarized below.

This bill made significant changes to the income tax law governing the planned gift tax credit allowed to individuals.
SB 2363

Planned gift income tax credit
The income tax law governing the planned gift tax credit for individuals was changed as follows:

- The definition of "planned gift" was expanded to provide that an eligible donee includes a qualified endowment of a North Dakota qualified nonprofit organization.
    - "Qualified endowment" means a permanent, irrevocable fund held by a North Dakota corporation or other established organization that is either (1) a qualified nonprofit organization or (2) a bank or trust company holding the fund on behalf of a qualified nonprofit organization.
    - "Permanent, irrevocable fund" means a fund established for a specific charitable, religious, or educational purpose. The fund may consist of cash, securities, mutual funds, and other kinds of investment assets, all of which are invested for income production or growth in value. The income or growth in value may be added to principal or expended by the fund.
- The rate of credit was increased from 20 percent to 40 percent.
- The maximum credit allowed for contributions made in a tax year was increased from $5,000 to $10,000 (or $20,000, if married filing a joint return).
- The carryforward time period for an unused credit was increased from 2 years to 3 years.
- If a contribution is recovered by an individual, the tax credit allowed for the contribution must be added to the tax due on the income tax return filed for the tax year in which the recovery occurs.

New endowment fund income tax credit
A new income tax credit is available to an estate, trust, partnership, C corporation, S corporation, or limited liability company that makes a charitable contribution to a qualified endowment of a North Dakota qualified nonprofit organization. See "Qualified endowment" and "Permanent, irrevocable

If a contribution is recovered by a taxpayer, the tax credit allowed for the contribution must be added to the tax due on the income tax return filed for the tax year in which the recovery occurs. SB 2363

fund" above, under "Planned gift income tax credit," for definitions. The tax credit is equal to 40 percent of the contributions made in a tax year, up to a maximum tax credit of $10,000, subject to the following:

- An unused credit may be carried forward up to 3 tax years.
- North Dakota taxable income must be increased by the amount of the contribution upon which the credit is computed, but only to the extent the contribution reduced federal taxable income.
- For an estate or trust, the tax credit must be allocated to the estate or trust and its beneficiaries based on the amount of income allocated to each of them.
- For a partnership, S corporation, or limited liability company (treated like a passthrough entity), the tax credit must be passed through to the entity's owners in proportion to their ownership interests.
- If a contribution is recovered by a taxpayer, the tax credit allowed for the contribution must be added to the tax due on the income tax return filed for the tax year in which the recovery occurs.

Statute: N.D.C.C. § 57-38-01.21
Effective date: Taxable years beginning on or after January 1, 2007.

Senate Concurrent Resolution 4021 - Establishment of single individual income tax system

This resolution, which was chosen as a priority item by the North Dakota Legislative Council, calls for a study of North Dakota's individual income tax statutes for the purpose of establishing a single, uniform income tax system (and return) for all individuals to replace the current two-system arrangement. Special emphasis is to be placed on identifying adjustments necessary to minimize or negate the impact of the change on any individual taxpayer. The Council must report its findings and recommendations, including any proposed legislation necessary to implement the recommendations, to the 2009 North Dakota Legislature.

Where to reach us if you have questions or need information...

	Phone	E-mail
Individual income tax	701-328-3450	individualtax@nd.gov
Corporation income tax	701-328-2046	corptax@nd.gov
Income tax withholding	701-328-3125	withhold@nd.gov
Commissioner's office	701-328-2770	taxinfo@nd.gov
Speech or hearing impaired Call Relay ND	1-800-366-6888	
Fax	701-328-1942	

Income tax update is a publication of the Tax Administration Division, North Dakota Office of State Tax Commissioner, 600 E. Boulevard Ave. Dept. 127, Bismarck, ND 58505-0599. It is published annually at the end of the calendar year and after each legislative session. It is intended for tax professionals and other persons interested in developments, updates, and other information about North Dakota's income and financial institution tax laws, rules, and administrative policies.

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ndTax
Office of
State Tax Commissioner
600 E Blvd Ave, Dept 127
Bismarck ND 58505-0599

nd.gov/tax
taxinfo@nd.gov
www.nd.gov

OFFICE OF STATE TAX COMMISSIONER
600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599

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